



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNRL-S, MNDL-S

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary for unpaid rent, for damages to the rental unit, for an order to retain the security deposit and pet damage deposit in partial satisfaction of the claim and to recover the cost of the filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions at the hearing. All parties confirmed under affirmation they were not recording the hearing.

Preliminary Issue

In this case, I allowed the parties to submit additional evidence as it related to how the tenancy ended as that was an issue at the original hearing on February 18, 2022. The interim decision should be read in conjunction with this Decision.

The tenants were to provide a copy of all text messages with the landlord's property manager that related to the tenancy ending on April 15, 2021, no later than February 25, 2022. The tenants did not provide any of the text messages that relate to the tenancy ending on April 15, 2021.

The landlord also clarified their application for unpaid rent. The landlord stated that they are only seeking to recover unpaid rent from April 1 to 15, 2021 as the tenants were living in the rental unit during this time period and not to the end of the lease as shown in their application for dispute resolution. Therefore, I have allowed the landlord's claim for unpaid rent of \$7,800.00 be reduced to \$1,950.00.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to monetary compensation for damages?

Is the landlord entitled to retain the security deposit and pet damage deposit in partial satisfaction of the claim?

Background and Evidence

The parties agreed that they entered into a fixed term tenancy which began on April 19, 2020, and was to expire on May 31, 2021. Rent in the amount of \$3,900.00 was payable on the first of each month. The tenants paid a security deposit of \$1,950.00 and a pet damage deposit of \$1,950.00 (the "Deposits"). The tenancy ended on April 15, 2021.

The landlord claims as follows:

a.	Unpaid rent for April 1 to 15 th , 2021	\$1,950.00
b.	Repayment of money borrowed to move	\$1,200.00
c.	Damages	\$3,397.94
d.	Cleaning charges	\$ 934.07
e.	Filing fee	\$ 100.00
	Total claimed	\$7,582.01

Unpaid rent for April 1 to 15th, 2021

The landlord testified that the tenant did not pay rent for April 1, 2021, to April 15, 2021. The landlord stated that the tenant was given their one month free rent in March 2021, based on a notice to end tenancy, as they did not pay the rent for March 2021. The landlord seeks to recover prorated rent for April 2021, in the amount of \$1,950.00.

The tenant MM acknowledged they did not pay any rent for April 2021, as they informed the landlord that they could keep this amount from the Deposits.

Repayment of money borrowed to move

The landlord testified that the tenant demanded that they give them \$1,200.00 to assist them with moving. The landlord stated that the tenants did not repay the amount loaned.

The tenant MM testified that the landlord was entitled to keep this amount from the Deposits.

Damages

Wall Damage

At the outset of the hearing the tenant MM stated they were not disputing the damage to the walls in the amount of \$600.00

Broken window

The landlord testified that the window in the master bedroom was broken. The landlord stated that they had to have the window repaired. The landlord seeks to recover the amount of \$660.00. Filed in evidence is a photograph showing the interior pane of the window broken and a receipt for repair.

The tenant MM testified that they cannot explain how the window was broken. The tenant stated on March 28, 2021, they were away for a couple of weeks and when they got back the window was broken and so was all their glass sculptures. MM stated that the room was really cold, and this could have caused the damage. MM stated they had to file their own insurance claim for their glass sculptures.

Floor damage

The landlord testified that the wood floor was damaged as there was a large stain and deep scratches. The landlord stated that the stain is too deep to have the floor refinished and the floorboards in that area need to be replaced. The landlord stated that the floors were new when the tenants moved into the rental unit. The landlord seeks to recover the estimate cost of \$1,000.00 for the repair. Filed in evidence is a copy of the estimate and photographs which show a large black spot in the wood floor.

The tenant MM testified that the scratches by the front door was from entering and exiting the rental unit. MM stated that the stain on the upstairs floor was from the upstairs toilet overflowing. MM stated that the floor was also damage by the refrigerator defrosting.

The landlord argued that there is no staining in the upstairs bathroom. The landlord stated that the large black stain is in the back foyer on the floor, which is nowhere near

the bathroom. The landlord stated that it looks like someone poured black oil on the floor.

Broken shelf in closet

The landlord testified that the closet shelf looked like it was used for climbing and was broken. The landlord seeks to recover the amount of \$44.11.

The tenant MM testified that they are not disputing the shelf unit was broken.

Refrigerator damage

The landlord testified that the refrigerator was new at the start of the tenancy. The landlord stated two shelves were cracked and broken as they looked like someone had either pulled on them or put extreme weight on them. The landlord seeks to recover the cost of \$247.83. Filed in evidence is a receipt and photographs.

The tenant AM stated that they do not know why the female tenant MM is asking them why the shelves were broken because he does not know anything.

The tenant MM testified that they did notify the landlord's agent at the time; however, they did not make the repair and it got worse overtime.

Kitchen cupboard damage

The landlord testified that two of the kitchen cupboard doors were cracked as they looked like they had been kicked. The landlord stated that they are unable to be repaired. The landlord seeks to recover the estimate cost of replacing the doors in the amount of \$120.00. Filed in evidence are photographs which show the doors are cracked from what appears to be from being kicked.

The tenant AM testified that they have no idea but believe there was a falling out with the tenant MM and another person.

The tenant MM testified that it must have happened when the tenant AM was there at Christmas with his family, and they do not know what happened

Door paint damage

The landlord testified that both the front and back door were scratched by the tenants' dog and will have to be sanded down and repainted. The landlord stated that the work has not been done; however, they have provided an estimate for the repair. The landlord seeks to recover the cost of \$651.00. Filed in evidence is an estimate and photographs.

The tenant MM testified that they had just repainted the front door, and it was only \$75.00 to paint and sand. MM stated that they did not repaint the back door and it could have needed to be repainted.

The landlord argued that the door was only repainted the year prior, not at the end of the tenancy.

Stains on heater

The landlord testified that the heater was stained as there was something on the heater that was pink or red. The landlord stated the rental unit was new at the start of the tenancy. The landlord seeks to recover the \$75.00 it cost to repaint. Filed in evidence is a receipt and photographs.

The tenant AM testified that he has no idea because he was not there most of the time. The tenant MM did not have a response.

Cleaning charges

The landlord testified that the rental unit was in a horrible mess when they entered the property at the end of the tenancy. The landlord stated that the entire house had to be cleaned from top to bottom as nothing was cleaned. The landlord stated that it looked like the tenants have never cleaned any of the appliances during the tenancy. The landlord seeks to recover the cost of cleaning in the amount of \$934.07.

The tenant AM testified that they were on a no contact order, and he was not there. The tenant MM testified that they were in a car accident with a small child and the co-tenant was not willing to help and there were only so much they could do on their own.

The tenant AM testified that they thought they were removed from the tenancy agreement because the conversation MM had with the landlord's agent. Filed in evidence are copy of text messages.

Earlier the female tenant stated that the AM was not removed from the lease because they did not attend to make those changes with the landlord.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlord has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation, or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

In this case the tenant AM and MM were co-tenants under a fixed term tenancy agreement which was to expire on May 31, 2021. Under section 45 of the Act the tenancy cannot end earlier than the date specified in the tenancy agreement.

While tenant AM believed they were removed from the tenancy agreement and has provided text messages between their co-tenant and the landlord's agent. I find I can put no weight on the text messages as they are dated August 27, 2020, and it states "Sean" will be moving out, this name is noted several times. This is not the name of the tenant MM and leads me to question the authenticity of the text messages.

Further, the evidence of the tenant MM was that the AS was never removed from the tenancy agreement because AM did not attend to make any changes to the signed tenancy agreement. While I accept AS was under a court release order; however, the actions of AS does not release them from their obligation under the Act. Therefore, I find AS is a tenant under the terms of this tenancy agreement as this was a fixed term tenancy and there were no written changes to the original agreement that were signed by the parties.

Unpaid rent for April 1 to 15th, 2021

The tenants failed to pay rent for the period of April 1 to 15, 2021. A tenant can only apply the Deposits with the consent of the landlord. I find the tenants breached the Act when they failed to pay rent for April 2021. Therefore, I find the landlord is entitled to recover unpaid rent in the prorated amount of **\$1,950.00**.

Repayment of money borrowed to move

The landlord assisted the tenants by giving to them the amount of \$1,200.00 to help with moving. The evidence of the tenant was this amount was to be repaid by the Deposits. Therefore, I find the landlord is entitled to the amount of **\$1,200.00**.

Damages

Leaving the rental unit at the end of a tenancy

37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

Wall Damage

At the outset of the hearing the tenant stated they were not disputing the damage to the walls. Therefore, I find the landlord is entitled to recover the amount of **\$600.00**.

Broken window

I accept the evidence of the landlord that the window was broken. I do not accept the tenant's evidence that this might have been from the room being cold, this is not logical and does not have the "ring of truth." Further, the tenant indicated other glass items were broken and covered by their insurance company. If this were true, the tenant could have had the window repaired and covered under their insurance. I find the tenant

breached the Act when they failed to repair the window. Therefore, I find the landlord is entitled to recover the cost of **\$660.00** for the window repair.

Floor damage

I accept the evidence of the landlord that the floor was damage primarily by a large black spot. I do not accept the evidence of the tenant that this was due to a toilet overflowing this is not consistent with the photograph. The photograph shows that this is circular spot and appears to be from something like oil being spilled. I find the tenants breached the Act when they failed to repair the floor. Therefore, I find the landlord is entitled to recover the estimate cost to remove and replace the damaged floorboards in the amount of **\$1,000.00**.

Broken shelf in closet

The tenants did not deny the damage cause to the shelving. Therefore, I find the landlord is entitled to recover the cost in the amount of **\$44.11**.

Refrigerator damage

In this case, the refrigerator was new at the start of the tenancy. The landlord has provided multiple photographs of the shelving and drawer. This is not normal wear and tear or the aging process. This is damage caused by neglect. Whether or not the tenant notified the landlord they are responsible to repair damage caused by their actions. I find the tenants breached the Act when they failed to replace the broken shelf and drawer. Therefore, I find the landlord is entitled to recover the cost in the amount of **\$247.83**.

Kitchen cupboard damage

In this case both tenants blame the other for the damage cause to the kitchen cupboard. Clearly the kitchen cupboards were damage by their actions as they appeared to have been kicked. I find the tenants breached the Act when they failed to replace the broken doors. Therefore, I find the landlord is entitled to recover the estimated cost in the amount of **\$120.00**.

Door paint damage

The doors were scratched by the tenants' pets during the tenancy. While I accept the tenants may have painted the front door at some point; however, clearly at the end of

the tenancy both doors were scratched. While the tenants may have paid \$75.00 to have the door painted at some point and argued the amount claimed by the landlord is high.

However, it is reasonable that the doors would have to be removed, sanded to remove the scratches, and then repainted. The tenants could have made the repair prior to their tenancy ending. I do not find the estimate cost unreasonable. Therefore, I find the landlord is entitled to recover the cost to repair the doors in the amount of **\$651.00**.

Stains on heater

In this case, neither tenant gave any reasonable explanation as to how the heater was stained. The photograph looks like this was an overspray of some type of substance. I find the tenants breached the Act when they failed to remove the stain from the heater. Therefore, I find the landlord is entitled to recover the cost of **\$75.00**.

Cleaning charges

In this case, the tenant acknowledged they did not do any cleaning at the end of the tenancy as they were in a car accident and had a young child. While this may have been true, it was still the tenant's responsibility to have the premises cleaned. I find the tenants breached the Act when they did not clean the rental unit at the end of the tenancy. The landlord has provided a receipt for cleaning. Therefore, I find the landlord is entitled to recover the cost of cleaning in the amount of **\$934.07**.

I find that the landlord has established a total monetary claim of **\$7,582.01** comprised of the above described amount(s) and the \$100.00 fee paid for this application.

I order that the landlord retain the security deposit of **\$1,950.00** and pet damage deposit of **\$1,950.00** in partial/full satisfaction of the claim and I grant the landlord(s) an order under section 67 of the Act for the balance due of **\$3,682.01**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenants are cautioned** that costs of such enforcement are recoverable from the tenants.

Conclusion

The landlord is granted a monetary order and may keep the security deposit and pet damage deposit in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Residential Tenancy Act.

Dated: June 22, 2022

Residential Tenancy Branch